IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 483 OF 1989

Rawan Bhau Mahajan & ors. ... Appellants

V/s

Narayan Atmaram Nagare ... Respondents

Shri G.R. Rege for the appellants.

Shri M.R. Katikar for Respondent Nos. 1 & 2.

CORAM: P.V. KAKADE, J.

DATED: 1ST DEC., 2004.

P.C.:

1. This appeal is preferred by the appellants defendants against the judgment and order passed by the Addl. District Judge, Kolhapur dated 27.7.1989 dismissing the appeal and confirming the judgment and order passed by the II Joint Civil Judge, Kolhapur, dated 31.1.1983 decreeing the suit and directing the appellants-defendants to hand over the possession of the suit property to the respondents-plaintiffs.

2. I have heard the learned counsel for both parties. Perused the record.

3. The plaintiffs came with the case that C.T.S. No. 2681/1-2 is situated at Kolhapur. Out of the said property, property bearing C.T.S. No.2681/1 is the suit property and is in possession of the defendants. Both these properties are ancestral properties. Defendant No.5 was the step sister of his father. Defendant No.1 is her son, whereas defendant No.2 is wife of her son Maruti and defendants 3 & 4 are his sisters. Out of the said properties, property C.T.S. No. 2681/1 was given in possession to the defendant No.5 by the father of the plaintiff as a licensee and was agreed that she will hand over possession of the suit premises to the plaintiff's father whenever plaintiff's father demand for the same.

4. It was alleged by the plaintiffs that defendants started causing nuisance and damages to the property and therefore asked the defendants to hand over the possession of the suit proeprty. However, the defendants avoided to do the same and hence the notice was issued dated 19.4.1975 but possession was not handed over and hence the suit came to be filed against the defendants.

The defendants resisted the suit and denied the allegations of the plaintiffs and it was contended that the plaintiff's father Atmaram had gone in adoption at Vadanage in the house of his maternal uncle and said Atmaram Nagare was brought up at Vadanage. Vithabai was the mother of Atmaram who died when Atmaram was child. One Babu Chambhar, Atmaram's father married with one Yesabai. Defendant No.5 Renubai is the daughter of Babu from said Yesabai. Defendant No.5 since her birth is residing in the suit property as owner. The suit property is said to be originally owned by Babu Chambhar and was his self-acquired property. It was acquired after Atmaram went to Vadanage in adoption. Then the suit property was exclusively owned by the defendant No.5 and that the plaintiff had no concern therewith. By way of amendment, it was showed by the defendants that defendant No.5 was in possession of the suit property as a absolute owner thereof by virtue of Sec.14 of the Hindu Succession Act as the property was given to her for maintenance. On such and other grounds the suit was sought to be dismissed with costs.

5. The learned Trial Judge adjudicated the dispute on merits and found that the plaintiff had proved his title to the suit property. It was further held that the

plaintiff had proved that the defendants were in possession of the suit premises as licensee. However, it was held that, father of the plaintiff was given in adoption as alleged and the property was self-acquired property of Babu Chambhar. It was also held that defendants failed to prove that the suit property was given to Renubai for maintenance and, therefore, she had become absolute owner thereof under Sec.14 of the Hindu Succession Act, 1956. On such and other grounds, the suit came to be decreed holding that the defendants were licensee in the property and the license was properly terminated by the plaintiff.

6. The appeal was carried to the District Court. The Addl. District Judge, Kolhapur heard the appeal on merits and came to the conclusion that the reasoning adopted and findings recorded by the learned Trial Judge was legal and correct and, therefore, the appeal came to be dismissed. Hence the present appeal was filed.

7. At the time of admission, the substantial question of law was framed to the effect that, whether the suit property was of absolute ownership of the appellants by virtue of Sec.14 of the Hindu Succession Act, 1956 ?

8. At this stage, it must be noted that the learned Addl. District Judge, Kolhapur was of the view that it was the fact that the defendant No.5 was the married daughter of Babu Chambhar who died in 1956, therefore, under the circumstances it was seen from the record that mere possession of the suit property would not be sufficient for the appellant defendant No.5 to claim any right, title and interest in the suit property. The lower Court also was of the view that it was clear from the record that Atmaram was the only son of deceased Babu and parties are Hindu and, therefore, in such case it was quite impossible that father would give his only son in adoption to other and in that place would cause his daughter and son-in-law to reside in his family as "Gharjawai". Admittedly, Ranubai was married and, therefore, after marriage there cannot be right of maintenance under Hindu Succession Act.

Now, it is to be noted that, if we take into account the provisions of Sec.14 of the Hindu Succession Act, it is clear that the marriage is no bar for invocation of Sec. 14 of the Hindu Succession Act and, therefore, observations of both the Courts below to that extent are not correct. However, the moot question around which the entire case revolves is, whether there was

sufficient evidence on record in order to give rise to the contention that the property in question was given in maintenance to Ranubai and, therefore, she had become absolute owner thereof by virtue of Sec. 14 of the Hindu Succession Act. No doubt that the issue involved is the question of law, however, it must be noted that it is a mixed question of law and fact in the sense that in order to invoke Sec.14 of the Act, it was necessary for the appellant-defendant No.5 to lead intangible evidence to show that the property was given to her in maintenance as alleged and that she was not mere licensee in the property. Mr. Rege, the learned counsel for the appellants, vehemently urged that there was oral evidence in support of this contention, however, it is clear that the oral evidence in such cases would not be sufficient when it is word against word and it was necessary that factum of giving the property towards maintenance should have been by positive, cogent and conclusive evidence which is not done in the present case.

9. In view of this position, the contention that the property in question was given in maintenance to Ranubai cannot be accepted.

10. At this stage, Mr. Rege, the learned counsel for the appellants made submission that the matter be remanded to the lower Court in order to reappreciate the position with regard to the question of evidence in respect of the plea that the property was the absolute property of Ranubai by virtue of Sec.14 of the Hindu Succession Act. However, I prefer to disagree with this proposition, especially in view of the fact that there is absolutely no evidence on record in support of this contention and moreover it also cannot be overlooked that the suit is of the year 1976 and the second appeal is being decided in the year 2004. Another round of litigation would not be desirable in the interest of both parties and, therefore, I disagree with the learned counsel for the appellants.

11. Lastly, There cannot be any presumption under Sec.14 of the Hindu Succession Act and it cannot be held that the property was given in maintenance and, therefore, has become absolute property of Ranubai.

In view of this position, the reasoning adopted and findings recorded by both the Courts below are required to be upheld.

In the result the appeal stands dismissed in limine with no order as to costs.

.....